IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 252 of 2001
(Old No. 1545 of 1988)

Gurdeep Singh S/o Sri Suren Singh
R/o Banskheri Police Station Bajpur
District Nainital .....Revisionist

Versus

State of U.P. .... Opposite Party

Sri S.K. Mandal learned counsel for the revisionist.
Learned A.G.A. on behalf of opposite party.

Hon'ble B.C. Kandpla, J.

This criminal revision has been filed by Gurdeep Singh against the judgment and order dated 06.10.1988 passed by IInd Additional District and Sessions Judge, Nainital in Criminal Appeal No. 193 of 1986.

Brief facts giving rise to the present revision are that on 13.09.1985 at about 5:30a.m. when S.I. Om Prakash along with certain police officials was on petrol duty, they saw a person coming on motor cycle and he tried to escape after seeing the police party. The police party apprehended him by using force. On his search they found one country made pistol and two cartridges from his possession. The police furnished all the formalities and after investigation submitted the chargesheet against the revisionist under section 25 Arms Act. Learned Judicial Magistrate, Kashipur convicted the accused/revisionist Gurdeep Singh under section 25 of Arms Act and sentence him for one year jail vide its judgment and order dated 07.10.1986.

The accused/revisionist filed the appeal before the court of learned Sessions Judge and the appeal was ultimately decided by IInd Additional Judge, Nainital vide his judgment

and order dated 06.10.1988 who dismissed the appeal and confirmed the judgment and order passed by the Judicial Magistrate, Kashipur.

Feeling aggrieved by aforesaid judgment passed by the learned IInd Additional Judge, Nainital the accused/revisionist Gurdeep Singh preferred the revision before the High Court at Allahabad which has ultimately been transferred to this Court after creation of Uttaranchal for disposal.

Heard the learned counsel for the revisionist and learned A.G.A. The record of the case has also been perused by me.

Learned counsel for the accused/revisionist has argued case as well as the search, whatsoever, has been made by the police is illegal and against the provision of the Criminal Procedure Code. It has also been argued that the independent witnesses have not been procured by the police party at the time of search.

The record shows that the prosecution has produced P.W.-1 Om Prakash, P.W.-2 Naresh Chander and P.W.-3 Jodgender Singh while the accused/revisionist produced D.W.-1 Jagdish Raj, D.W.-2 Inder Singh and D.W.3 Sher Singh.

It appears from the perusal of the testimony of the witnesses that the incident had taken place in the early hours of the day i.e. 5:30AM and the incident had taken place all of a sudden. It has been deposed by the prosecution witnesses that the police party was on petrol duty and they found the accused/revisionist all of a sudden who wanted to make escape good after seeing the police party. It appears to be quite natural that in the early hours of the day i.e. 5:30a.m. and that too in the month of October, the presence of any independent public

witness is not expected at the place of the occurrence. Moreover, as I have already observed above that this incident has taken place all of a sudden, therefore, the police party did not have any occasion to procure the independent public witness at the spot. Under these circumstances it cannot be said that for want of any public witness the arrest of the accused becomes doubtful.

As far as the statement of the defence witnesses produced by the revisionist in his favour is concerned, perusal of those statements do not help the accused/revisionist in any manner. The manner in which the incident had taken place cannot be disputed on the basis of the deposition of the defence witnesses. The recovery of the country made pistol and the cartridges from the possession of the accused/revisionist can also not be put to doubt by any stretch of evidence.

For the reasons above, I am of the view that the present revision being devoid of merits and is liable to be dismissed.

However, on the question of sentence, I come to the conclusion that this revision was filed in the year 1988 and since 08.12.1988 the accused/revisionist is on bail. The record shows that the accused/revisionist had already been detained in jail for about 2 months and 14 days. Therefore, I think it would not be desirable in the interest of justice that the accused/revisionist should be sent to jail again after such a long time. The accused/revisionist is to be sentenced for the period already undergone by him in jail.

The revision is accordingly dismissed. The judgment and order passed by the court below with regard to the conviction of the accused/revisionist is confirmed. As I have already observed above the accused/revisionist need not be sent to jail

again and he is sentenced for the period already undergone during the pendency of the trial as well as the appeal before the court below.

(B.C. Kandpal, J.)

July 16th 2004
ASWAL